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IN THE
Supreme Court of the United States
OCTOBER TERM, 1992

DANFORD WILLIAMS, Lance Corporal,
U.S. Marine Corps,
Petitioner

v.

UNITED STATES OF AMERICA,
Respondent

On Petition for a Writ of Certiorari to the United States Court of Military Appeals

---

REPLY BRIEF FOR PETITIONER

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ARGUMENT

Respondent's Brief in Opposition notes that two Courts of Military Review have rejected the issue presented. Brief in Opposition at 4. Neither opinion, however, was correctly decided.

In *United States v. Prive*, 35 M.J. 569 (C.G.C.M.R. 1992), the Coast Guard Court of Military Review expressly held that general court-martial judges are officers, not mere employees, of the United States. *Id.* at 572-73. The Coast Guard Court, however, held that Congress is

not bound by the Appointments Clause when exercising its Article I, Section 8, Clause 14 powers to regulate the land and naval forces. *Id.* at 576-77. This holding is inconsistent with this Court's command that "[u]nless their selection is elsewhere provided for, all officers of the United States are to be appointed in accordance with the [Appointments] Clause. . . . No class or type of officer is excluded because of its special functions." *Buckley v. Valeo*, 424 U.S. 1, 132 (1976) (per curiam). Thus, *Prive* was wrongly decided.

In *United States v. Coffman*, 35 M.J. 591 (N.M.C.M.R. 1992) (per curiam), the Navy-Marine Corps Court of Military Review held that the method by which military trial judges are appointed satisfies the Appointments Clause because all of these judges had earlier been appointed and confirmed as military officers. *Id.* at 592. This argument, however, misses the whole point of the Appointments Clause. While the trial judge in this case was appointed by the President *as a military officer*, he was not appointed by the President *as a judge*. Judge Newton had the authority to decide guilt or innocence and sentence petitioner *not* because Judge Newton was a military officer, but because he was filling the office of general court-martial judge. The *independent* judicial authority which Judge Newton and other military trial judges possess is quite different from the structured, accountable authority which other military officers exercise.

Coffman relied in part on *Shoemaker v. United States*, 147 U.S. 282 (1893). 35 M.J. at 592. This reliance, however, is misplaced. Judge Lamberth emphasizes, "[T]he provision challenged in *Shoemaker* added certain duties to two *officers*; it did not confer additional responsibilities on any particular *officer*." *Olympic Fed. Sav. & Loan Ass'n v. Director, Office of Thrift Supervision*, 732 F. Supp. 1183, 1192 (D.D.C. 1990). *Shoemaker* is entirely irrelevant to the question of how military trial judges are appointed because Congress did not

provide that service as a judge is an additional duty of some other *office*. A general court-martial judgeship is not an appurtenance of another position. Rather, it is an office unto itself. Unlike the two military officers at issue in *Shoemaker*, military trial judges do not serve *ex officio*. Thus, *Shoemaker* does not resolve the Appointments Clause issue.

CONCLUSION

Because the petition presents an unresolved constitutional question which affects every case tried by a court-martial, this Honorable Court should issue a writ of certiorari.

Respectfully submitted,

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